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Attorneys for Plaintiff
SINHDARELLA, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SINHDARELLA, INC., a California
corporation,

Plaintiff,

v.

KEVIN VU, an individual, d/b/a/ THE
BOILING CRAB; CAFE BONITA, INC.,
a California corporation; and DOES 2
through 10,

Defendants.

CASE NO. C 07-04353 WHA

Honorable William H. Alsup

**SUPPLEMENTAL DECLARATION OF
MICHAEL W. DE VRIES IN SUPPORT OF
PLAINTIFF SINHDARELLA, INC.'S
MOTION FOR PRELIMINARY
INJUNCTION**

Date: February 7, 2008
Time: 8:00 a.m.
Courtroom: 9

SUPPLEMENTAL DECLARATION OF MICHAEL W. DE VRIES

I, Michael W. De Vries, hereby declare under penalty of perjury that:

1. I am an active member of the State Bar of California and an attorney with the law firm of Latham & Watkins LLP, counsel of record for plaintiff Sinhdarella, Inc. The facts set forth herein are within my personal knowledge, and if called as a witness, I could and would testify competently thereto.
2. Attached hereto as Exhibit A is a true and correct copy of the Certificate of Status for Cafe Bonita, Inc. obtained from the California Secretary of State on December 19, 2007, showing that Defendant Café Bonita, Inc. was suspended as a corporation by the California Secretary of State on July 20, 2006, shortly after Defendant Kevin Vu's Opposition to Sinhdarella's motion for preliminary injunction claims Defendant began using the name THE BOILING CRAB towards the end of June 2006, and that Café Bonita, Inc. was still suspended by the California Secretary of State as of December 19, 2007.
3. Attached hereto as Exhibit B is a true and correct copy of Defendant Kevin Vu's interrogatory responses received on January 2, 2008 from counsel for Defendant, Christopher Hays.
4. Attached hereto as Exhibit C is a true and correct copy of the WHOIS search results for the domain name boilingcrab.com obtained from www.networksolutions.com on January 24, 2008, showing that this domain name was registered on May 15, 2006, more than a month before Defendant Kevin Vu's Opposition to Sinhdarella's motion for preliminary injunction claims Defendant began using the name THE BOILING CRAB towards the end of June 2006.
5. Attached hereto as Exhibit D is a true and correct copy of the WHOIS search results for the domain name theboilingcrab.com obtained from www.networksolutions.com on January 24, 2008, showing that this domain name was registered on May 18, 2006, more than a month before Defendant Kevin Vu's Opposition to Sinhdarella's motion for

1 preliminary injunction claims Defendant began using the name THE BOILING CRAB
2 towards the end of June 2006.

3 6. Attached hereto as Exhibit E is a true and correct copy of the document Bates labeled
4 D000068, which was produced to Sinhdarella, Inc. by Defendant Kevin Vu through his
5 counsel Christopher Hays and which bears the date 10/17/2007.

6 7. Paragraph 10 of my declaration filed concurrently with Sinhdarella's motion for
7 preliminary injunction contained a clerical error that is immaterial to any issue connected
8 to Sinhdarella's pending motion for preliminary injunction. That paragraph stated:
9 "During a meet and confer call on November 13, 2007, Christopher Hays, current counsel
10 for defendant Kevin Vu, told me that he had advised his client to resume use of the name
11 'The Boiling Crab.'" Solely to ensure the accuracy of my prior declaration, based upon a
12 review of my calendar records, it appears that the referenced conversation with Mr. Hays
13 may have taken place on November 15, 2007, rather than on November 13, 2007.

14 I declare under penalty of perjury of the laws of the United States that the
15 foregoing is true and correct.

16 Executed this 24th day of January, 2008 at Costa Mesa, California.

17 

18 Michael W. De Vries
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EXHIBIT A

State of California
Secretary of State

CERTIFICATE OF STATUS

ENTITY NAME: CAFE BONITA, INC.
ENTITY FILE NUMBER: C2438032
ENTITY FILE DATE: JANUARY 2, 2004
ENTITY TYPE: DOMESTIC CORPORATION
ENTITY JURISDICTION: CALIFORNIA
ENTITY STATUS: SUSPENDED

I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify:

That the corporate powers, rights and privileges of the above-referenced entity were suspended by the Secretary of State on July 20, 2006 pursuant to the provisions of the California Corporations Code; and

That the powers, rights and privileges of the above-referenced entity remain suspended, reinstatement never having been effected.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of December 22, 2007.

Debra Bowen

DEBRA BOWEN
Secretary of State

EXHIBIT B

LAW OFFICES OF
CHRISTOPHER HAYS
ONE EMBARCADERO CENTER, SUITE 500
SAN FRANCISCO, CALIFORNIA 94111

CHRISTOPHER HAYS, State Bar No. 59480
Law Offices of Christopher Hays
One Embarcadero Center, Suite 500
San Francisco, California 94111
Telephone: (415) 398-0848
Facsimile: (415) 931-0444
Email: <hays-sf@pacbell.net>

Attorneys for Defendant
KEVIN VU

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SINHDARELLA, INC.

vs.

KEVIN VU, etc., et al.,

Defendants.

No. C 07 04353 WHA

ANSWERS TO INTERROGATORIES

PROPOUNDING PARTY: Plaintiff SINHDARELLA, INC.

RESPONDING PARTY: Defendant KEVIN VU

SET NUMBER: ONE.

Defendant KEVIN VU answers the following numbered
Interrogatories as follows:

With respect to all of said Answers to Interrogatories, Defendant
KEVIN VU states that the Boiling Crab Restaurant located at 393 North Capitol
Avenue, San Jose, California, was at all times owned and operated by Cafe Bonita,
Inc., a California corporation, and Defendant KEVIN VU at no time had any
ownership interest therein as an individual.

1. **Date and Location of First Use of name "Boiling Crab."**

Cafe Bonita, Inc. first used the name "THE BOILING CRAB" on June 20,
2006, at the seafood restaurant owned and operated by it at 393 North
Capitol Avenue, San Jose, CA 95133, serving crawfish, crab, oyster, clam,
shrimp, and lobster.

1
2. **Trademark Search for name "Boiling Crab."**

2
3 Before Defendant KEVIN VU, on behalf of Cafe Bonita, Inc., registered as a
4 fictitious business name the name "THE BOILING CRAB," he went to the
5 United States Patent and Trademark office website and did a name search
6 to see if the name had been previously registered. His search indicated that
7 it had not.

8
9 3. **First Awareness of Plaintiff's "Boiling Crab" Restaurants.**

10 Defendant KEVIN VU first became aware of the plaintiff 's "THE BOILING
11 CRAB" restaurants after he was served with the Summons and Complaint in
12 this action.

13
14 4. **Goods and Services Provided by Defendant.**

15 Cafe Bonita, Inc.'s "Boiling Crab" restaurant serves crawfish, crab, clams,
16 oysters, shrimp, corn, sausage, and sometime lobsters. For drinks it serves
17 bottled water. soft drinks, beer and wine.

18
19 5. **Customers Goods and Services Marketed To.**

20 Cafe Bonita, Inc. markets to the local people near the restaurant and
21 especially in San Jose.

22
23 6. **Advertising Channels Used.**

24 Cafe Bonita, Inc. advertised in *Thang Mo* magazine, a local Vietnamese
25 magazine, on *Vien Thao*, a local Vietnamese radio station. and on *Penny*
26 *Saver*, a local public magazine, and had flyers passed around the
27 neighborhood near the restaurant.

28
7. **Monthly Advertising Expenditures.**

Presently, none. Cafe Bonita, Inc. advertised only on the first month to the
Thang Mo, and *Vien Thao*, and in March of 2007 in the *Penny Saver*.

8. **Expansion Plans.**

Defendant KEVIN VU has an ownership interest in a recently-opened
restaurant in Sacramento known as "The Boiling Crawfish," 6835 Stockton
Boulevard, Sacramento, California, and in a restaurant to be opened in San

1 Francisco known as "The Boiling Crawfish," 2333 Irving Street, San
2 Francisco, California.

3 9. **Comments Regarding Similarity to Plaintiff's Restaurants.**

4 Defendant KEVIN VU is not aware of any comments made (orally or in
5 writing) regarding any similarity between any aspect of the restaurant known
6 as "The Boiling Crab" owned and operated by Cafe Bonita, Inc., and the
7 Plaintiff's Restaurants.

8 10. **Misdirected Communications Intended for Plaintiff's
9 Restaurants.**

10 Defendant KEVIN VU has not received, and is not aware that Cafe Bonita,
11 Inc., has received, any misdirected mail, telephone calls, orders, inquiries, or
12 complaints that were intended for the Plaintiff's Restaurants.

13 11. **Gross Revenues, Expenses, and Profits of Defendant's
14 Restaurants.**

15 Defendant VU responds to this Interrogatory by offering, pursuant to *Federal*
16 *Rule of Civil Procedure* 33(d), to produce Business Records by which the
17 answer may be determined, namely the Bank Statements and Schedule Cs
18 to Income Tax Returns for the restaurant business for KEVIN VU for the
19 years 2004 and 2005, and the Bank Statements for Cafe Bonita, Inc.'s "The
20 Boiling Crab" restaurant in 2006 and 2007, and the Income Tax Return for
21 Cafe Bonita, Inc.'s "The Boiling Crab" restaurant in 2006.

22 12. **Evidence of Plaintiff's Trademark's Unenforceability.**

23 Evidence of Plaintiff's Trademark's unenforceability will consist of (1) proof
24 that Plaintiff's trademark is merely descriptive; (2) proof that Plaintiff's
25 trademark has no secondary meaning; (3) proof that Defendants' use of the
26 name "The Boiling Crab" was lawful under 15 U.S.C. § 1115(b)(5), because this
27 name was adopted by Defendants without knowledge of Plaintiff's prior use
28 and has been continuously used by Defendant Cafe Bonita, Inc. from a date
prior to Plaintiff's registration of said mark, and (4) proof of lack of confusion
between Defendants' use of the name "The Boiling Crab" in connection with

1 the restaurant of that name owned and operated by Cafe Bonita, Inc., and
2 Plaintiff's use of said name.

3 13. **Current and Former Suppliers of Defendant's Restaurant.**

4 Sal Crawfish, Phil Clark Crayfish, Critter Runners, Bob Baits, Restaurant
5 Depot, Costco, Eddie's Produce, Seafood Connection, Cash and Carry,
6 Louisiana Product.

7 14. **Persons Assisting Defendant in Design.**

8 Graphic Signs - Tuan Vo, Century Graphic, (408) 298-2598; Menu -
9 Defendant KEVIN VU; business card, flyers, layout for magazine - Century
10 Graphic; T-shirt- a friend of Defendant KEVIN VU in Vietnam named "Tin"
11 [surname unknown].

12 15. **Employees at Defendant's Restaurant.**

13 Defendant VU responds to this Interrogatory by offering, pursuant to *Federal*
14 *Rule of Civil Procedure* 33(d), to produce Business Records by which the
15 answer may be determined, namely, the lists of employees from E-Chex
16 Payroll Company.

17 16. **Origin of names "Boiling Crab" and "Boiling Crawfish."**

18 In December of 2005, Defendant KEVIN VU traveled to Vietnam. He had
19 crawfish at a restaurant in Ho Chi Minh City named "THE BOILING CRAB."
20 Defendant KEVIN VU thereafter conceived of an idea to open a restaurant
21 serving seafood in place of the existing restaurant in San Jose in which he
22 had an ownership interest. When Defendant KEVIN VU returned to the
23 United States, he still was self-employed as a dentist in San Jose, California,
24 and in Las Vegas, Nevada. As a result, he didn't have time to carry out this
25 plan until he sold his office in San Jose in May of 2006, after which he traveled
26 to Houston to do some research. Thereafter, he changed the style of his
27 existing restaurant in San Jose and caused its name to be changed to "THE
28 BOILING CRAB." Defendant KEVIN VU came up with the name "THE
BOILING CRAWFISH" in response to threats by Plaintiff's attorney, Michael

1 De Vries, to have the United States Marshal "shut down" Defendants'
2 restaurant unless Defendants ceased using the name "The Boiling Crab."

3 17. **Facts, Documents, and Witnesses re Confusion with**
4 **Plaintiff's "Boiling Crab" Restaurants.**

5 Defendant KEVIN VU is unaware at this time of any facts, documents, or
6 witnesses which demonstrate that there is no likelihood of confusion
7 between Plaintiff's and Defendants' "Boiling Crab" restaurants.

8 18. **Names of Defendant's Customers.**

9 Defendant KEVIN VU responds to this Interrogatory by stating that there are
10 no records by which the answer may be determined, namely credit card and
11 check records, since Cafe Bonita, Inc.'s "Boiling Crab" restaurant accepts
12 only cash. The only customers of which Defendant KEVIN VU is aware are
13 those which were disclosed previously pursuant to *Federal Rule of Civil*
14 *Procedure* 26.

15 Dated: 2 January 2008.

Law Offices of Christopher Hays

16
17 By /s/ Christopher Hays
18 Christopher Hays
19 Attorneys for Defendant
20 KEVIN VU
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VERIFICATION

1

2 I, Kevin Vu, declare:



3

4 I am a Defendant in the above-entitled action; I have read the
5 foregoing ANSWERS TO INTERROGATORIES and know its contents; I declare that
6 the matters stated in the foregoing document are true of my own knowledge,
7 except as to the matters which are stated on my information or belief, and as to
8 those matters, that I believe them to be true.

9

10 I declare under penalty of perjury under the laws of the State of
11 California that the foregoing is true and correct, and that this verification is executed
12 on 31 December 2007 at San Francisco, California.

13

  12/31/07

Kevin Vu

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LAW OFFICES OF
CHRISTOPHER HAYS
ONE EMBARCADERO CENTER, SUITE 500
SAN FRANCISCO, CALIFORNIA 94111

-PROOF OF SERVICE

STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO

I am employed by Law Offices Of Christopher Hays in the City and County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is One Embarcadero Center, Suite 500, San Francisco, California 94111.

On 2 January 2008 I served the foregoing document(s) described as ANSWERS TO INTERROGATORIES on the interested parties in this action as stated on the attached service list as follows:

X By placing true copies thereof enclosed in sealed envelope(s) addressed as stated on the attached service list

BY PERSONAL SERVICE

I delivered such envelope(s) by hand to the offices of the addressee(s).

X BY MAIL

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice such envelope(s) would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at San Francisco, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY FACSIMILE:

On 2 January 2008, at approximately _____, I served the above stated document by facsimile from the facsimile machine of Law Offices Of Christopher Hays, whose fax number is (415) 956-1221, as stated on the attached service list. The facsimile machine used complies with CRC Rule 2003(3). Pursuant to CRC Rule 2008(e) the transmission by facsimile was reported as complete and without error.

X BY E-MAIL:

On 2 January 2008, at approximately 3:00 pm, I served the above stated document by e-mail directed to the parties as indicated of the attached service list.

Executed on 2 January 2008 at San Francisco, California.

X (FEDERAL) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

/s/ Christopher Hays
Christopher Hays

ATTACHED SERVICE LIST

Michael W. DeVries, Esq.
Andrew J. Fossum, Esq.
Latham & Watkins
650 Town Center Drive, 20th Floor
Costa Mesa, California 92626

<mike.devries@lw.com>

<Andrew.Fossum@lw.com>

EXHIBIT C

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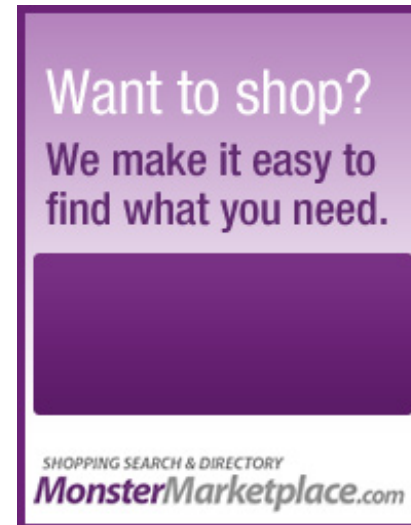
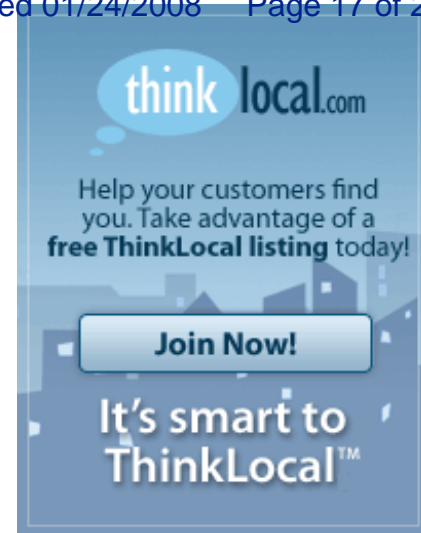
Registered through: GoDaddy.com, Inc. (<http://www.godaddy.com>)
Domain Name: BOILINGCRAB.COM
Created on: 15-May-06
Expires on: 15-May-11
Last Updated on:

Administrative Contact:

Private, Registration BOILINGCRAB.COM@domainsbyproxy.com
Domains by Proxy, Inc.
DomainsByProxy.com
15111 N. Hayden Rd., Ste 160, PMB 353
Scottsdale, Arizona 85260
United States
(480) 624-2599 Fax -- (480) 624-2599

Technical Contact:

Private, Registration BOILINGCRAB.COM@domainsbyproxy.com
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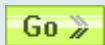
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Current Registrar: GODADDY.COM, INC.
IP Address: [70.47.144.67](#) (ARIN & RIPE IP search)
IP Location: US(UNITED STATES)-NEW JERSEY-CEDAR KNOLLS
Record Type: Domain Name
Server Type: Apache 1
Lock Status: clientDeleteProhibited
Web Site Status: Active
DMOZ no listings
Y! Directory: [see listings](#)
Secure: No
E-commerce: No

Traffic Ranking: Not available

Data as of: 14-Jun-2005
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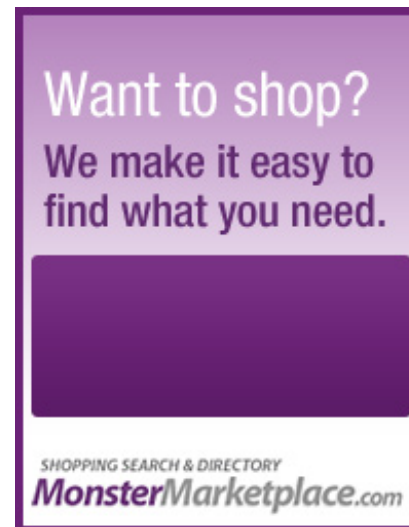
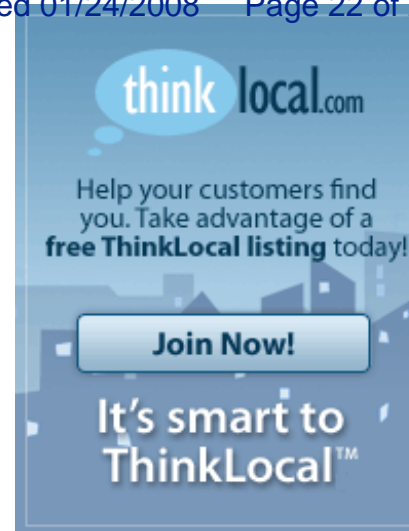
Registered through: GoDaddy.com, Inc. (<http://www.godaddy.com>)
Domain Name: THEBOILINGCRAB.COM
Created on: 18-May-06
Expires on: 18-May-11
Last Updated on:

Administrative Contact:

Private, Registration THEBOILINGCRAB.COM@domainsbyproxy.com
Domains by Proxy, Inc.
DomainsByProxy.com
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Search by:

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(480) 624-2599 Fax -- (480) 624-2599

Domain servers in listed order:

DNS.SITE5.COM
DNS2.SITE5.COM

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Current Registrar: GODADDY.COM, INC.
IP Address: [70.47.144.67](#) (ARIN & RIPE IP search)
IP Location: US(UNITED STATES)-NEW JERSEY-CEDAR KNOLLS
Record Type: Domain Name
Server Type: Apache 1
Lock Status: clientDeleteProhibited
Web Site Status: Active
DMOZ no listings
Y! Directory: [see listings](#)
Secure: No
E-commerce: No

Traffic Ranking: 1

When you register a domain name, current policies require that the contact information for your domain name registration be included in a public database known as WHOIS. To learn about actions you can take to protect your WHOIS information visit www.internetprivacyadvocate.org.

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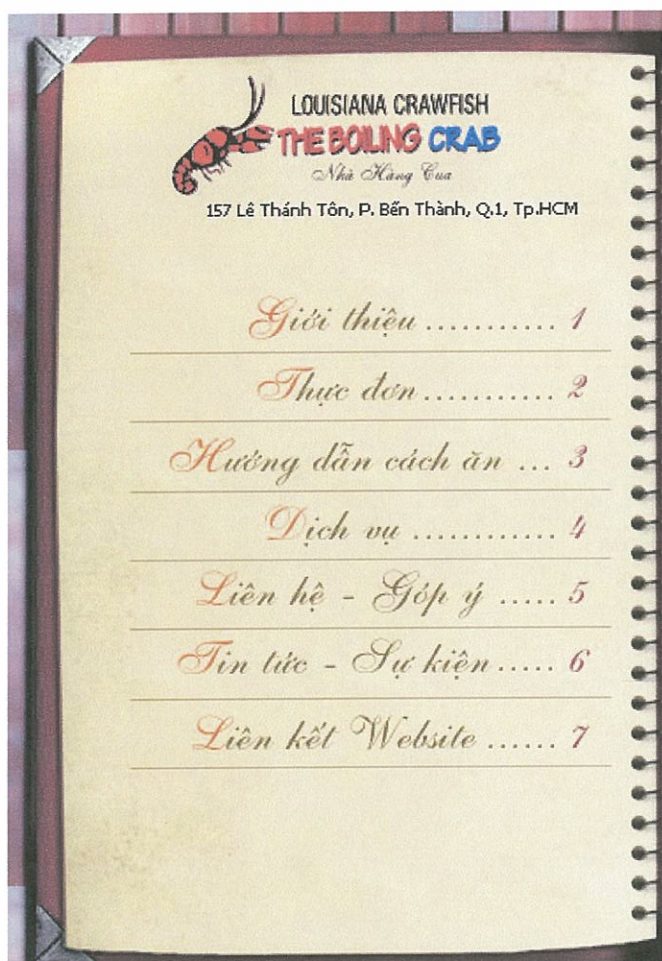
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100% Secure Transaction

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EXHIBIT E



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<i>Thực đơn</i>	
	<p>The Boiling Crab Salad Salad Nhà hàng Cua</p> <p>49.000 VND</p>
	<p>Crawfish bisque soup Soup Crawfish</p> <p>49.000 VND</p>
	<p>The Boiling Crab Soup Soup Nhà hàng Cua</p> <p>49.000 VND</p>

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